

1 Gary M. Kaplan (State Bar No. 155530)  
gkaplan@fbm.com  
2 Farella Braun + Martel LLP  
235 Montgomery Street, 17th Floor  
3 San Francisco, CA 94104  
Telephone: (415) 954-4400  
4 Facsimile: (415) 954-4480

5 Proposed Attorneys for Debtor in Possession  
YELLOW CAB COOPERATIVE, INC.  
6  
7

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 In re

13 YELLOW CAB COOPERATIVE, INC.,<sup>1</sup>

14 Debtor.

Case No. 16-30063

Chapter 11

HEARING

Date: January 26, 2016  
Time: 10:30 a.m.  
Place: 450 Golden Gate Avenue  
San Francisco, CA  
Courtroom: 17  
Judge: Hon. Dennis Montali

15  
16  
17  
18  
19 **MOTION OF THE DEBTOR TO APPROVE STIPULATION WITH**  
20 **FIRST REPUBLIC BANK FOR USE OF CASH COLLATERAL AND**  
21 **PROVIDING ADEQUATE PROTECTION PURSUANT TO STIPULATION**

22 **INTRODUCTION AND SUMMARY OF REQUESTED RELIEF**

23 Yellow Cab Cooperative, Inc., the debtor in possession herein ("Yellow Cab" or the  
24 "Debtor") in the above-captioned Chapter 11 case (the "Chapter 11 Case"), hereby submit this  
25 motion (the "Motion") for entry of an order (the "Order") approving its request to use cash  
26

27  
28 <sup>1</sup> The last four digits of the Debtor's tax identification number are 7102. The location of the Debtor's headquarters  
and service address is 1200 Mississippi Street, San Francisco, CA 94107.

DEBTOR'S MOT. FOR USE OF CASH  
COLLATERAL PER STIPULATION

collateral pursuant to 11 U.S.C. §363(c) to pay ongoing operating expenses after approval through preliminary and final hearings. The Debtor proposes to use cash collateral in normal operations pending the date of a final hearing according to the operating budget (the “Budget”) attached as Exhibit “A” to the Stipulation for Use of Cash Collateral (the “Stipulation”) attached hereto as Exhibit 2.<sup>2</sup> The Debtor also requests approval to use cash collateral pursuant to the Stipulation and Budget on a final basis. In support of this Motion, the Debtor respectfully represents<sup>3</sup>:

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. FACTUAL AND PROCEDURAL BACKGROUND**

#### **A. Jurisdiction**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are Sections 105(a), 363(b), and 507(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

#### **B. Factual Background**

4. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

5. The Debtor continues to operate its businesses and manage its properties as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

6. No trustee, examiner, creditors’ committee, or other official committee has been appointed in the Debtor’s Chapter 11 Case.

---

<sup>2</sup> Capitalized terms not defined herein have the meaning ascribed to them in the Stipulation.

<sup>3</sup> The facts and circumstances supporting this Motion are set forth in the Declaration of Pamela Martinez in Support of First Day Motions (the “First Day Declaration”), filed contemporaneously herewith, deemed incorporated herein.

7. A description of the Debtor's business, capital structure, and the circumstances leading to the Chapter 11 filing is set forth in the First Day Declaration.

**C. Relief Requested**

8. First Republic Bank ("FRB" or "Lender") is the Debtor's primary secured creditor, pursuant to an August 31, 2012 Loan Agreement between the parties. As of the Petition Date, the principal balance owed by the Debtor under the Loan Agreement is approximately \$93,864, with interest accruing at 5.25% per annum, which loan matures on May 31, 2016. Pursuant to the Loan Agreement and related documents (collectively, the "Loan Documents") (copies attached hereto as Exhibit 1), FRB has a perfected first-priority security interest in virtually all of the Debtor's assets, including its "cash collateral" as such term is defined in Bankruptcy Code Section 363.

9. The Debtor has entered into the Stipulation with FRB, subject to Court approval, to permit the Debtor to use cash collateral in the ordinary course of business during this Chapter 11 Case, subject to the Budget and other requirements. Pursuant to this Motion, the Debtor seeks approval of the Stipulation and authority to use cash collateral pursuant to Bankruptcy Code Section 363(c) and the related adequate protection to be provided to FRB.

**II. INTRODUCTORY STATEMENT/CERTIFICATION UNDER CASH COLLATERAL GUIDELINES**

The following statement is made for purposes of compliance with Section B of this District's Guidelines for Cash Collateral & Financing Motions & Stipulations (the "Guidelines"):

**Name of Each Entity With an Interest in the Cash Collateral**

First Republic Bank ("Lender") has an interest in Cash Collateral of the Debtor.

**Purposes for the Use of the Cash Collateral**

Cash collateral is to be used in the ordinary course for operations of the business of the Debtor, which provides taxicab transportation services in the San Francisco, California area.

**Terms, Including Duration, of the Use of Cash Collateral**

Cash collateral is to be used to pay operating expenses in the ordinary course so long as monthly adequate protection payments are made to Lender. Use of cash collateral may continue

1 until the earlier of: the effective date of a Chapter 11 plan of reorganization confirmed in the  
2 Case, the dismissal of the Case or conversion of the Case to Chapter 7 of the Bankruptcy Code.

3 **Liens, Cash Payments, Or Other Adequate Protection**

4 Lender shall receive monthly adequate protection payments equal to the regular debt  
5 service payments owed by the Debtor under the Loan Documents in the amount of approximately  
6 \$28,500 per month, along with payment of certain fees and expenses, and a replacement lien on  
7 Collateral, with a back-up super-priority claim to the extent that adequate protection proves  
8 inadequate as measured by a decline in the value of Lender's Collateral as of the Petition Date.  
9 The replacement lien shall attach only to the collateral of the kind and character to which  
10 Lender's liens would have attached pre-petition (and not to claims or causes of action possessed  
11 by Debtor's bankruptcy estate under Sections 506(c), 544, 545, 547, 548, 549, 553(b), or 723 and  
12 724 or the proceeds therefrom), and shall be subordinate to Carve-Out Expenses (including the  
13 compensation and expenses (excluding professional fees), of any subsequently-appointed trustee  
14 in the bankruptcy case, and certain unpaid professional fees and disbursements incurred by the  
15 Debtor and the Committee).

16 The undersigned Certifying Professional has read this Motion (including the foregoing  
17 Introductory Statement) and the accompanying Stipulation for Use of Cash Collateral; to the best  
18 of my knowledge, information and belief, formed after reasonable inquiry, the terms of the relief  
19 sought in the Motion or Stipulation are in conformity with the Court's Guidelines For Cash  
20 Collateral And Financing Motions And Stipulations, except as otherwise noted herein. I  
21 understand and have advised the Debtor that the Court may grant appropriate relief under  
22 Bankruptcy Rule 9024 if the Court determines that a material element of the Motion or  
23 Stipulation was not adequately disclosed in the Introductory Statement.

24 Dated: January 22, 2016

FARELLA BRAUN + MARTEL LLP

25 By: /s Gary M. Kaplan  
26 Gary M. Kaplan

27 Attorneys for Debtor in Possession  
28 YELLOW CAB COOPERATIVE, INC.

### III. DISCLOSURES UNDER CASH COLLATERAL GUIDELINES

The following disclosures are made for purposes of compliance with Guideline C of the Guidelines.<sup>4</sup>

TERM	DESCRIPTION	LOCATION IN DOCUMENT
Adequate protection or priority for claim arising prepetition, including granting of lien on property of estate or use of estate property to make payment on such claim	Postpetition Lien on Collateral of the kind and character to which Lender's liens attached prepetition to the extent of diminution in value of prepetition Collateral.  Superpriority administrative claim to the extent of diminution in value of prepetition Collateral per Bankruptcy Code Sections 503(b) & 507(b).  Regular debt service payments (currently, approximately \$28,500 monthly) and other amounts payable under Loan Documents; payment of Lender's postpetition legal expenses.	Stipulation §2.1  Stipulation §2.2.6  Stipulation §§2.2.1-2.2.4
Determination regarding validity, perfection, priority or amount of claim arising prepetition or lien securing such claim	If no Lender Claim Objection is timely filed (or a Lender Claim Objection is timely filed but is denied), Lender's prepetition claim deemed allowed in full, and liens in favor of Lender encumbering assets of Debtor deemed senior, valid, perfected, and unavoidable.	Stipulation §4.3
Waiver or modification of automatic stay or other Bankruptcy Code provisions	During the Operative Period, Debtor waives any rights to seek authority to incur financing or indebtedness from any other party other than Lender that includes the granting of liens, claims or interests in favor of such other party that are senior or <i>pari passu</i> with the liens in favor of Lender.	Stipulation §4.1
Waiver or modification of Debtor's authority to file plan, right to seek extension of exclusivity period or right to request use of cash collateral	Upon Notice of Default, Debtor prohibited from further use of Cash Collateral without further consent of Lender or order of the Court; Debtor may bring emergency motion within cure period (3 business days) to contest validity of the default.	Stipulation §5.2

<sup>4</sup> The following chart summarizes certain material provisions of the Stipulation. In the event of any inconsistency with the Stipulation, the terms and conditions of the Stipulation shall control.

1		During the Operative Period, Debtor waives any rights to seek authority to use Cash Collateral on terms other than those set forth in this Stipulation, except under exigent circumstances.	Stipulation §4.1
2			
3			
4	Waiver or modification of applicability of nonbankruptcy law relating to perfection of a lien on property of the estate, or on foreclosure or other lien enforcement	Entry of the Agreed Order will constitute conclusive evidence of the perfection, of the Postpetition Lien, without any further act required under nonbankruptcy law.	Stipulation §2.1.3
5			
6			
7			
8	Release, waiver or limitation on any claim or cause of action belonging to the estate, including any modification of deadline to commence an action	If no Lender Claim Objection is timely filed (or a Lender Claim Objection is timely filed but is denied), Lender's prepetition claim deemed allowed in full, and liens in favor of Lender encumbering assets of Debtor deemed senior, valid, perfected, and unavoidable.	Stipulation §4.3
9			
10			
11			
12			
13	Release, waiver or limitation of any right under Bankruptcy Code Section 506	No administrative expenses incurred during Operative Period may be charged against Lender or the Collateral pursuant to Section 506(c).	Stipulation §4.1
14			
15	Carve-outs for professionals' fees and expenses	Debtor may use Cash Collateral to pay following Carve-Out Expenses: U.S. Trustee fees pursuant to 28 U.S.C. § 1930(a); reasonable fees and expenses incurred by subsequently appointed trustee (excluding professional fees); unpaid professional fees and disbursements incurred by Debtor and Committee in compliance with Budget, incurred prior to Event of Default; and unpaid professional fees and disbursements incurred by Debtor and the Committee after Event of Default, to extent approved by Court.	Stipulation §1.1.2.1
16			
17			
18			
19			
20			
21			
22			

**A. Other Material Provisions Of Cash Collateral Stipulation**

In addition to those terms summarized above, the Stipulation provides for the Debtor to use Cash Collateral in the operation of its businesses in accordance with the Budget (with expenditures not to exceed 115% of the budgeted amount on a line item basis, or 110% on an aggregate basis), to make regular debt service payments to FRB (as well as certain other specified

1 expenditures), and to pay the Carve Out Expenses. FRB's consent to the use of Cash Collateral is  
2 conditioned on there being no Event of Default, which is defined to include: (a) the Debtor's  
3 breach of the Stipulation; (b) the granting in favor of another party of a lien on the Debtor's  
4 property, or a claim having priority over the security interests and claims in favor of FRB; (c)  
5 conversion of this Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code or dismissal  
6 of this Chapter 11 Case; (d) appointment of a trustee in the Chapter 11 Case; or (e) any stay,  
7 reversal or rescission of the terms of the Agreed Order, or any modification of its terms that is not  
8 reasonably acceptable to Lender.

9 The Debtor is required to provide weekly reports to FRB of actual versus budgeted cash  
10 flows. The Debtor also must furnish FRB upon request with copies of the monthly operating  
11 reports and other financial reports filed with the Office of the U.S. Trustee or the Court. The  
12 Stipulation also includes customary terms and conditions (e.g., Debtor's insurance coverage,  
13 FRB's access to Debtor's business premises, Collateral and related books and records).

#### 14 **IV. DISCUSSION**

##### 15 **A. The Debtor's Use Of FRB's Cash Collateral Is Justified Because FRB's** 16 **Interest Is Adequately Protected And It Has Also Consented To Such Use**

17 Bankruptcy Code Section 363(a) defines "cash collateral" in relevant part as follows:

18 "[C]ash collateral" means cash, negotiable instruments, documents  
19 of title, securities, deposit accounts, or other cash equivalents  
20 whenever acquired in which the estate and an entity other than the  
21 estate have an interest and includes the proceeds, products,  
22 offspring, rents, or profits of property . . . subject to a security  
23 interest as provided in section 552(b) of [the Bankruptcy Code],  
24 whether existing before or after the commencement of a case under  
25 [the Bankruptcy Code].

26 11 U.S.C. §363(a).

27 In view of FRB's security interest in virtually all of the Debtor's assets pursuant to the  
28 Loan Documents, the cash generated through operating of its business constitutes "cash  
collateral" securing the obligations owing to FRB.

Bankruptcy Code Section 363(c)(2) provides in relevant part:

(2) The trustee may not use . . . cash collateral under paragraph (1)  
of this subsection unless –



1 (A) each entity that has an interest in such cash collateral consents;  
2 or

3 (B) the court, after notice and a hearing, authorizes such use . . . in  
4 accordance with the provisions of this section.

5 11 U.S.C. §363(c)(2).

6 As discussed above, pursuant to the Stipulation, FRB has consented to the Debtor's use of  
7 Cash Collateral, subject to the terms and conditions therein. Thus, the Debtor submits that it may  
8 use Cash Collateral pursuant to Section 363(c)(2)(A).

9 Alternatively, the Court should authorize the Debtor to use Cash Collateral under Section  
10 363(c)(2)(B), in view of FRB's interest being adequately protected in accordance with  
11 Bankruptcy Section 361. Section 361 provides in relevant part:

12 When adequate protection is required under Section . . . 363 . . . of  
13 [the Bankruptcy Code] of an interest of an entity in property, such  
14 adequate protection may be provided by-

15 (1) requiring the trustee to make a cash payment or periodic cash  
16 payments to such entity, to the extent that . . . use, sale or lease  
17 under Section 363 of [the Bankruptcy Code] . . . results in a  
18 decrease in the value of such entity's interest in such property;

19 (2) providing to such entity an additional or replacement lien to the  
20 extent that such stay, use, sale, lease, or grant results in a decrease  
21 in the value of such entity's interest in such property . . . .

22 11 U.S.C. §363(c)(2).

23 As discussed above, the Stipulation provides adequate protection of FRB's interest,  
24 including by the Debtor making monthly adequate protection payment equal to the regular debt  
25 service owed to FRB, and by granting FRB the Postpetition Lien to the extent of any diminution  
26 in the value of its Collateral, as well as a back-up super priority administrative claim.  
27 Accordingly, the Debtor submits that FRB's interest is adequately protected.

28 **B. Interim and Final Approval Of Debtor's Cash Collateral Use**

Bankruptcy Rule 4001(b)(2) permits the Court to authorize the interim use of cash  
collateral "as is necessary to avoid immediate and irreparable harm to the estate pending a final  
hearing." Fed. R. Bankr. P. 4001(b)(2). As discussed above, the Debtor seeks authority to use  
FRB's Cash Collateral to avoid immediate and irreparable harm to pay necessary expenses in



1 normal operations in accordance with the Budget (including employee compensation and benefits,  
2 rent for real property utilized by the Debtor, permit rent for use of medallions owned by drivers,  
3 taxes and license fees, fuel and parts for the Debtor's vehicle fleet, and debt service payments to  
4 the financiers of the Debtor's vehicle fleet), pending a final hearing on the Motion, pursuant to  
5 Rule 4001(b)(2). In conjunction therewith, the Debtor also requests that it be authorized to grant  
6 the Postpetition Lien to FRB pending a final hearing.

7 **C. Notice** \_\_\_\_\_

8 Notice of this Motion has been provided to: (a) the Office of the United States Trustee;  
9 (b) FRB; and (c) the Debtor's twenty largest unsecured creditors. In light of the nature of the  
10 relief requested, the Debtor submits that no other or further notice is necessary.

11 **D. No Prior Request**

12 The Debtor has not previously sought the relief requested herein from this or any other  
13 court.

14 WHEREFORE, the Debtor prays that the Court enter its Order as follows:

15 (a) Approving the Stipulation, the use of cash collateral and adequate protection provided  
16 therein on an interim basis pending a final hearing;

17 (b) Setting a final hearing for approval of the Stipulation;

18 (c) At the final hearing, approving the Stipulation, the use of cash collateral and adequate  
19 protection on a final basis for the duration of the Stipulation; and

20 (d) For such other and further relief as the Court deems just and proper.

21 Dated: January 22, 2016

FARELLA BRAUN + MARTEL LLP

22  
23 By: /s Gary M. Kaplan  
Gary M. Kaplan

24 Proposed Attorneys for Debtor in Possession  
25 YELLOW CAB COOPERATIVE, INC.

26 32416\5231893.1